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District Court

MAY 22 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ROBERT D. BRADSHAW,

Plaintiff,

v.

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS, et al.,

Defendants.

Civil Action No. 05-0027

REPLY TO PLAINTIFF'S
MEMORANDUM OPPOSING
DEFENDANT'S MOTION TO
DISMISS

Hearing date: June 8, 2006
Time: 9:00 a.m.

Plaintiff's memorandum opposing the motion to dismiss makes the following arguments:

(1) In the motions brought by other defendants arguments have been made that not enough facts have been pled, so, given the complexity of these claims, and given the fact that in includes a claim for fraud, it should be deemed satisfactory. Plaintiff's Memorandum, ¶¶ 2-4. (2) The memorandum in support of this motion to dismiss is not short, plain, and concise and it includes irrelevant material. Plaintiff's Memorandum ¶¶ 6-13. (3) Those parts of the second amended

1 complaint that are cited in the moving papers relate primarily to other defendants, implying that
2 the allegations against the moving defendant are adequate. Plaintiff's Memorandum ¶¶
3 14,15,18,20-23. (4) There is no rule limiting the number of pages or paragraphs, so the length of
4 the second amended complaint is of no consequence. Plaintiff's Memorandum ¶¶ 1, 11.

6 DISCUSSION

7 1. Plaintiff is required to comply with Rule 8 regardless of what claims they are or whom
8 they are against.

9 The fact that other defendants who have filed motions to dismiss under Fed. R. Civ. P. 12(b)
10 attacked the first amended complaint as having insufficiencies does not give defendant license to
11 make the averments in the second amended complaint long, complicated and prolix. Besides, the
12 position of those who brought demurring motions was not that the complaint did not have
13 sufficient length or detail, but that it failed to allege key elements to a sustainable claim. Their
14 point was not that plaintiff had left out something important, but that the necessary elements were
15 not pled because they have no basis in fact. Thus, the failure to allege that the justices were acting
16 in an extrajudicial capacity was not due to an oversight in drafting, but because it simply could not
17 be fairly stated.

18 Neither is the fact that there is a claim based on fraud a justification to disregard the
19 restrictions of Rule 8. While Fed. R. Civ. P. 9(b) does require that fraud allegations be pled with
20 greater particularity, that rule must be read in the context of Rule 8 requirements. One rule does
21 not control the other. *Carrigan v. California State Legislature*, 263 F.2d 560, 565 (9th Cir.
22 1959)("When fraud is alleged, it must be particularized as Rule 9(b) requires, but it still must be as
23 short, plain, simple concise, and direct, as is reasonable under the circumstances, and as Rule 8(a)
24 and 8(e) require.")

1 The fact that the requirement for particularity and for brevity and directness are not mutually
2 exclusive is illustrated by the fact that courts have had no difficulty in dismissing complaints on
3 both grounds simultaneously. See, *Schmidt v. Herrmann*, 614 F.2d 1221, 1123-1124 (9th Cir
4 1980); *County Nat'l. Bank v. Mayer*, 788 F. Supp. 1136, 1143 (E.D. Cal. 1992); *Moore v. United*
5 *States*, 263 F.R.D. 647, 652 (N.D. Cal. 2000) ("The Court finds that Plaintiff's second amended
6 complaint fails to comply with Rule 8(a) and Rule 9(b).")

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8 2. Because the second amended complaint is a pleading, it is subject to Rule 8.

9 It is not clear what point plaintiff's opposition attempts to make in paragraphs six through
10 thirteen. Those paragraphs attempt to point out how the moving papers and supporting
11 memorandum fall short of Rule 8 criteria. It is not clear if it was meant merely as ridicule, or if it
12 has some more meaningful purpose. Perhaps it is to imply that since even the product filed by a
13 legal professional is not short, plain, concise and direct, then it is unfair to hold plaintiff's second
14 amended complaint to a higher standard. If that is the point being made, it is based on a
15 misconception.

16 Rule 8(a) applies to "[a] *pleading* with sets for a claim for relief..." (emphasis added). Rule
17 8(e)(1) says: "Each averment of a *pleading* shall be simple, concise and direct." (emphasis added).
18 A complaint is one of those items included within the definition of pleadings. Fed. R. Civ. P. 7(a).
19 Neither a motion nor a brief on a motion is a pleading. *Breier v. Northern Cal. Bowling*
20 *Proprietor's Ass'n.*, 316 F.2d 787, 789 (9th Cir. 1963) Thus, the supporting memorandum of
21 which the opposition is critical is not subject to the regulation of Rule 8.

22 This illustrates the underlying problem in this and in the prior complaints filed by plaintiff.
23 They do not reflect any appreciation for the role of a complaint under the federal rules. Instead
24 they attempt to do too much. Not content to limit himself to the factual basis of the claims,
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1 plaintiff includes everything that he can think of that might support the claims or make his
2 recovery appear more equitable. To this end, plaintiff has, and continues in the second amended
3 complaint, to include things such as attacks on the character and on the credibility of the
4 defendants, reasons he believes there is bias against him, reasons that the judgment should never
5 have been entered against him, and other argumentative, superfluous and inappropriate material.
6 This is why it is not short and plain; and this is why its averments are not simple, concise and
7 direct.

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9 3. This defendant is directly affected by the failure of the second amended complaint to
10 comply with Rule 8.

11 As the Court's prior order points out: "Failure to abide by the Rules makes it difficult for
12 defendant and the court to determine who plaintiff claims caused what injury." Order Granting
13 Defendant Sorensen's Motion to Dismiss with Leave to Amend, filed February 21, 2006, p.2.
14 Contrary to the impression the opposition describes, due to the length, complexity, and sheer bulk
15 of the allegations made, defendant is at a loss to know just what it is that is the basis of plaintiff's
16 claims.

17 For example, the eleventh claim purports to be for violation of the Civil Rights Act of 1870.
18 It is brought against each and every one of the named defendants. The substance of the claim
19 merely says that defendants "each and collectively failed to afford BRADSWAW due process and
20 equal rights of the law in their action to impose an illegal judgment on BRADSHAW without any
21 recourse for reimbursement or restitution from the CNMI government. The actions of the
22 defendant CNMI and its agents and SORENSEN and BISOM clearly violated the Civil Rights Act
23 of 1879 and the US Constitution." (§ 357). The substance of the next paragraph is: "The actions
24 of the defendants in Violation the Civil Rights Act of 1870 produced a cause of action, pursuant to
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1 which both legal and equitable remedies may be had..." (§ 358). The next four paragraphs merely
2 repeat that defendants violated Bradshaw's constitutional rights, that he was damaged in several
3 ways by the violation, and that he is entitled to restitution and damages. There are no facts
4 whatsoever pled in the seven paragraphs that make up that claim.

5 The factual basis of the eleventh claim, if there is one, must be provided by the
6 incorporation of the previous 355 paragraphs by reference, which is effected by paragraph 356, the
7 first paragraph in that claim. Therefore, this defendant, as with all the other defendants, is left with
8 the task of ferreting through all the verbiage that precedes that claim to figure out what it is he did
9 that might fit into the kind of wrong that the act is meant to address. Because of the volume that is
10 a very labor intensive job. More importantly, it entails guessing at what parts of the allegations
11 plaintiff has in mind as the source of his action against this defendant. As was the case in
12 *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996), "the very prolixity of the complaint made it
13 difficult to determine just what circumstances were supposed to have given rise to the various
14 causes of action." *Id.* at 1178.

15 This is not something that a pleader should have to do. As to any violations of the Civil
16 Rights Act of 1870, each defendant is entitled to be specifically advised (a) what it is that he, she
17 of it did that violated that act; (b) when and where it occurred; (c) what injury plaintiff sustained as
18 a result of the violation. In other words, defendants are entitled to have the benefit of what the
19 Court directed the plaintiff to do in drafting the second amended complaint. Order Granting
20 Defendant Sorensen's Motion to Dismiss, etc., filed February 21, 2006, p.2, l. 22-25.

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22 4. When it comes to the length of a complaint, size does matter.

23 One way to determine whether a pleading is short and simple is to look at its length. In fact,
24 in the Ninth Circuit appellate decisions that review the dismissal of complaints for failure to adhere
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1 to Rule 8, the size of the complaint has been noted. *Agnew v. Moody*, 330 F.2d 868, 870 (9th Cir.
2 1964)(“ 55 pages excluding prayer and exhibits.”); *Schmidt*, 614 F.2d at 1223 (30 pages, including
3 21 pages of allegations and 9 pages of addenda); *Nevijel v. North Coast Life Insurance Co.*, 651
4 F.2d 671, 674 (9th Cir. 1981)(“23 pages long with 24 pages of addenda..”). In *McHenry v. Renne*,
5 *supra*, the plaintiffs were given leave to file amended complaints with directions as to how to
6 plead. “[T]hey filed a fifty-three page third amended complaint repeating the vices of the second
7 amended complaint. Instead of editing their twenty-six page introduction, plaintiffs expanded it.”
8 *McHenry*, 84 F.3d at 1176.

9 Remarkably, all of these cases involve complaints that were significantly less than the 72
10 pages of allegations and 53 pages of exhibits that are presented by this second amended complaint.


11 12 CONCLUSION

13 The Court is urged to dismiss the second amended complaint without leave to amend.
14 Plaintiff has been given ample opportunity and direct instruction on what it takes to provide an
15 adequate complaint. Moreover, while dismissal on grounds of Rule 8 does not depend on whether
16 the complaint is wholly without merit, it is appropriate in exercising its discretion for a district
17 court to “consider the strength of the plaintiff’s case.” *McHenry*, 83 F.3d at 1179. It is also
18 appropriate to consider the burden imposed by plaintiff in related litigation. *Id.* When these
19 considerations are taken into account, further leave to amend at this point is not called for.

20 Additionally, when dismissing a complaint under Fed. R. Civ. P. 41(b) for noncompliance
21 with Rule 8, all defendants similarly situated may be dismissed at the same time. *Bach v. Mason*,
22 190 F.R.D. 567, 571 (D. Idaho 1999). The Court “may properly on its own motion dismiss an
23 action as to defendants who have not moved to dismiss where such defendants are in a position
24 similar to that of moving defendants or where claims against such defendants are integrally
25

1 related." *Silverton v. Dep't of Treasury*, 644 F.2d 1341,1345 (9th Cir. 1981); see also, *Omar v. Sea-*
2 *Land Services, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) ("Such a dismissal may be made without
3 notice where the plaintiff cannot possibly win relief.") The court's authority in this regard
4 includes sua sponte dismissal as to both defendants who have not been served and those who have
5 not yet answered or appeared. See, *Ricotta v. State of California*, 4 F. Supp. 2d 961, 978 (S.D.
6 1998); *Bach*, 190 F.R.D. at 571, n. 7.

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9 Respectfully submitted,

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12 Jay H. Sorensen
13 In Pro Se
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on MAY 18, 2006

a copy of the following:

REPLY TO PLAINTIFF'S MEMORANDUM OPPOSING DEFENDANT'S MOTION TO
DISMISS


was deposited for delivery to the U.S. Post Office, first class mail, postage prepaid,
addressed as set forth below (except as noted):

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